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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT SEATTLE

8 STEVEN J. BELL,

9 Plaintiff,

10 v.

11 FEDERAL DEPOSIT INSURANCE
12 CORPORATION, *et al.*,

13 Defendants.

Case No. C09-0150RSL

ORDER GRANTING TWIN CAPITAL
MORTGAGE'S MOTION TO DISMISS

14 This matter comes before the Court on "Defendant Twin Capital Mortgage's
15 Partial Motion to Dismiss Pursuant to Fed. R. Civ. P. 12(b)(6)." Dkt. # 37. Defendant seeks
16 dismissal of plaintiff's intentional infliction of emotional distress claim on the ground that
17 plaintiff has failed to allege intent and/or outrageous conduct.

18 In order to state a claim for intentional infliction of emotional distress, plaintiff
19 must allege (1) that defendant engaged in extreme and outrageous conduct, (2) that it
20 intentionally or recklessly inflicted emotional distress, and (3) that plaintiff suffered severe
21 emotional distress as a result of defendant's conduct. Reid v. Pierce County, 136 Wn.2d 195,
22 202 (1998). Although these elements involve fact questions that are generally reserved for the
23 jury, the court must first determine whether reasonable minds could differ on whether the
24 conduct was sufficiently extreme to result in liability. Robel v. Roundup Corp., 148 Wn.2d 35,
25 51 (2002). In the context of this motion to dismiss, the allegations of the complaint are taken in
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1 the light most favorable to plaintiff. In re Syntex Corp. Sec. Litig., 95 F.3d 922, 925-26 (9th Cir.
2 1996); LSO, Ltd. v. Stroh, 205 F.3d 1146, 1150 n.2 (9th Cir. 2000). The claim for intentional
3 infliction of emotional distress will not be dismissed unless the complaint, taken as a whole, fails
4 to give rise to a plausible inference of actionable conduct. Bell Atlantic Corp. v. Twombly, 550
5 U.S. 544, 556 (2007).

6 Plaintiff alleges that defendant Twin Capital Mortgage made multiple
7 misrepresentations regarding the terms and conditions of the loans it brokered, charged “junk”
8 fees unrelated to any actual expenditures or services provided, failed to disclose material terms
9 of the loans, and took affirmative steps to conceal the true costs of the loans, all in an effort to
10 maximize its profits at plaintiff’s expense. If the allegations are true, defendant’s business
11 practices may violate state and federal statutes, may constitute fraud, and are generally
12 deplorable. Nevertheless, defendant’s alleged conduct threatened only plaintiff’s financial well-
13 being: there were no physical threats, emotional abuse, or even embarrassment/indignities
14 aimed at plaintiff. Defendant’s practices, as alleged by plaintiff, are not “so outrageous in
15 character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be
16 regarded as atrocious, and utterly intolerable in a civilized community.” Birkliid v. Boeing Co.,
17 127 Wn.2d 853, 867 (1995) (quoting Grimsby v. Samson, 85 Wn.2d 52, 59 (1975)). The
18 intentional infliction of emotional distress claim asserted against Twin Capital Mortgage must,
19 therefore, be dismissed.

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21 Dated this 7th day of January, 2010.

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23 Robert S. Lasnik
24 United States District Judge
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